

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 921

Introduced by Brashear, 4

Read first time January 5, 2000

Committee: Judiciary

A BILL

1 FOR AN ACT relating to court procedure; to amend sections 11-124,
2 25-525, 25-1142, 25-1273.01, 25-1315.02, 25-1515,
3 25-1517, 25-1542, 25-1804, 25-2002, 25-2008, 25-21,130,
4 25-21,167, 25-21,217, 25-21,220, 25-21,230, 25-2728,
5 25-2733, 27-802, 29-2525, 42-372, 42-372.01, 45-103, and
6 76-718, Reissue Revised Statutes of Nebraska, section
7 25-2001, Revised Statutes Supplement, 1998, and sections
8 25-705, 25-1912, 25-1931, and 25-2729, Revised Statutes
9 Supplement, 1999; to change and eliminate provisions
10 relating to new trials, judgments, discovery, motions,
11 and appeals; to harmonize provisions; to repeal the
12 original sections; and to outright repeal sections
13 25-1143, 25-1145, 25-1302, and 25-2003, Reissue Revised
14 Statutes of Nebraska.
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 11-124, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 11-124. If any such corporation ~~fail, neglect, or refuse~~
4 fails, neglects, or refuses to pay any fine, judgment, or decree
5 rendered against it upon any such recognizance, stipulation, bond,
6 or undertaking, from which no appeal, writ of error, or supersedeas
7 ~~shall have been~~ is taken for ninety days after the ~~rendition~~ entry
8 of such judgment or decree, it shall forfeit all rights to do
9 business in this state until such judgment or decree ~~be~~ is fully
10 paid or satisfied.

11 Sec. 2. Section 25-525, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 25-525. A party against whom a judgment or order has
14 been rendered without other service than by publication in a
15 newspaper, may, at any time within five years after the date of
16 entry of the judgment or order, have the same opened, ~~and be let in~~
17 ~~to defend, before~~ to allow the applicant to appear in court and
18 make a defense. ~~Before~~ the judgment or order ~~shall be~~ is opened,
19 the applicant shall give notice to the adverse party of ~~his~~ the
20 intention to make such application, and shall file a full answer to
21 the petition, pay all costs, if the court requires them to be paid,
22 and make it appear to the satisfaction of the court, by affidavit,
23 that during the pendency of the action ~~he~~ the applicant had no
24 actual notice thereof in time to appear in court and make ~~his~~ a
25 defense. The ~~but the~~ title to any property, the subject of the
26 judgment or order sought to be opened, which by it, or in
27 consequence of it, ~~shall have~~ has passed to a purchaser in good
28 faith, shall not be affected by any proceedings under this section,

1 nor shall ~~they~~ the proceedings affect the title of any property
2 sold before judgment under an attachment. The adverse party, on
3 the hearing of an application to open a judgment or order, as
4 provided by this section, shall be allowed to present
5 counter-affidavits, to show that during the pendency of the action
6 the applicant had notice thereof in time to appear in court and
7 make ~~his~~ a defense.

8 Sec. 3. Section 25-705, Revised Statutes Supplement,
9 1999, is amended to read:

10 25-705. (1) This section applies when an action involves
11 multiple parties or more than one cause of action.

12 (2) A plaintiff or defendant need not be interested in
13 obtaining or defending against all the relief demanded. Judgment
14 may be given for one or more of the plaintiffs according to their
15 respective rights to relief and against one or more of the
16 defendants according to their respective liabilities.

17 (3) The court may make such orders as will prevent a
18 party from being embarrassed, delayed, or put to expense by the
19 inclusion of a party against whom the party asserts no claim and
20 who asserts no claim against the party and may order separate
21 trials or make other orders to prevent delay or prejudice.

22 (4) Persons other than those made parties to the original
23 action may be made parties to a counterclaim or cross-claim in
24 accordance with section 25-311 or 25-320.

25 (5) Misjoinder of parties is not ground for dismissal of
26 an action. Parties may be dropped or added by order of the court
27 on motion of any party or of its own initiative at any stage of the
28 action and on such terms as are just. Any claim against a party

1 may be severed and proceeded with separately.

2 ~~(6)~~ When more than one claim for relief is presented in
3 an action, whether as a claim, counterclaim, cross-claim, or
4 third-party claim, or when multiple parties are involved, the court
5 may direct the entry of a final judgment as to one or more but
6 fewer than all of the claims or parties only upon an express
7 determination that there is no just reason for delay and upon an
8 express direction for the entry of judgment. In the absence of
9 such determination and direction, any order or other form of
10 decision, however designated, which adjudicates fewer than all the
11 claims or the rights and liabilities of fewer than all the parties
12 shall not terminate the action as to any of the claims or parties,
13 and the order or other form of decision is subject to revision at
14 any time before the entry of judgment adjudicating all the claims
15 and the rights and liabilities of all the parties.

16 ~~(7)~~ When a court has ordered a final judgment under the
17 conditions stated in subsection ~~(6)~~ of this section, the court may
18 stay enforcement of that judgment until the entering of a
19 subsequent judgment or judgments and may prescribe such conditions
20 as are necessary to secure the benefit thereof to the party in
21 whose favor the judgment is entered.

22 Sec. 4. Section 25-1142, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-1142. A new trial is a reexamination in the same
25 court of an issue of fact after a verdict by a jury, report of a
26 referee, or a trial and decision by the court. The former verdict,
27 report, or decision shall be vacated and a new trial granted on the
28 application of the party aggrieved, for any of the following

1 causes, affecting materially the substantial rights of such party:
2 (1) Irregularity in the proceedings of the court, jury, referee, or
3 prevailing party, or any order of ~~this~~ the court or referee, or
4 abuse of discretion, by which the party was prevented from having a
5 fair trial; (2) misconduct of the jury or prevailing party; (3)
6 accident or surprise, which ordinary prudence could not have
7 guarded against; (4) excessive damages, appearing to have been
8 given under the influence of passion or prejudice; (5) error in the
9 assessment of the amount of recovery, whether too large or too
10 small, ~~where~~ if the action is upon a contract, or for the injury or
11 detention of property; (6) that the verdict, report, or decision is
12 not sustained by sufficient evidence, or is contrary to law; (7)
13 newly discovered evidence, material for the party applying, which
14 ~~he~~ the moving party could not, with reasonable diligence, have
15 discovered and produced at the trial; and (8) error of law
16 occurring at the trial and excepted to by the party making the
17 application.

18 Sec. 5. A motion for a new trial shall be filed no later
19 than ten days after the entry of the judgment.

20 Sec. 6. A motion to alter or amend a judgment shall be
21 filed no later than ten days after the entry of the judgment.

22 Sec. 7. Section 25-1273.01, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-1273.01. The Supreme Court shall promulgate rules of
25 procedure for discovery in civil cases, which rules shall not be in
26 conflict with laws governing such matters. Rules which provide for
27 the admissibility of depositions shall not be considered as
28 conflicting with the Nebraska Evidence Rules.

1 Sec. 8. Section 25-1315.02, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-1315.02. Whenever a motion for a directed verdict
4 made at the close of all the evidence is denied or for any reason
5 is not granted, the court is deemed to have submitted the action to
6 the jury subject to a later determination of the legal questions
7 raised by the motion. ~~Within ten days after the reception of a~~
8 ~~verdict~~ No later than ten days after the entry of judgment, a party
9 who has moved for a directed verdict may move to have the verdict
10 and any judgment entered thereon set aside and to have judgment
11 entered in accordance with ~~his~~ the moving party's motion for a
12 directed verdict. ~~If , or if a verdict was is not returned, such~~
13 ~~party,~~ within ten days after the jury has been is discharged, a
14 party who has moved for a directed verdict may move for judgment in
15 accordance with ~~his~~ the moving party's motion for a directed
16 verdict. A motion for a new trial may be joined with this motion,
17 or a new trial may be prayed for in the alternative. ~~If a verdict~~
18 ~~was returned judgment was entered,~~ the court may allow the judgment
19 to stand or may reopen the judgment and either order a new trial or
20 direct the entry of judgment as if the requested verdict had been
21 directed. If no verdict was returned, the court may direct the
22 entry of judgment as if the requested verdict had been directed or
23 may order a new trial.

24 Sec. 9. (1) When more than one claim for relief is
25 presented in an action, whether as a claim, counterclaim,
26 cross-claim, or third-party claim, or when multiple parties are
27 involved, the court may direct the entry of a final judgment as to
28 one or more but fewer than all of the claims or parties only upon

1 an express determination that there is no just reason for delay and
2 upon an express direction for the entry of judgment. In the
3 absence of such determination and direction, any order or other
4 form of decision, however designated, which adjudicates fewer than
5 all the claims or the rights and liabilities of fewer than all the
6 parties shall not terminate the action as to any of the claims or
7 parties, and the order or other form of decision is subject to
8 revision at any time before the entry of judgment adjudicating all
9 the claims and the rights and liabilities of all the parties.

10 (2) When a court has ordered a final judgment under the
11 conditions stated in subsection (1) of this section, the court may
12 stay enforcement of that judgment until the entry of a subsequent
13 judgment or judgments and may prescribe such conditions as are
14 necessary to secure the benefit thereof to the party in whose favor
15 the judgment is entered.

16 Sec. 10. Section 25-1515, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 25-1515. If execution ~~shall not be~~ is not sued out
19 within five years ~~from~~ after the date of entry of any judgment that
20 now is or may hereafter be rendered in any court of record in this
21 state, or if five years ~~shall~~ have intervened between the date of
22 the last execution issued on such judgment and the time of suing
23 out another writ of execution thereon, such judgment, and all
24 taxable costs in the action in which such judgment was obtained,
25 shall become dormant, and shall cease to operate as a lien on the
26 estate of the judgment debtor.

27 Sec. 11. Section 25-1517, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 25-1517. When two or more writs of execution against the
2 same debtor ~~shall be sued out during the term in which judgment was~~
3 ~~rendered, or within ten days thereafter, and when two or more writs~~
4 ~~of execution against the same debtor shall be~~ are delivered to the
5 officer on the same day, no preference shall be given to either of
6 such writs; but if a sufficient sum of money ~~be~~ is not made to
7 satisfy all executions, the amount made shall be distributed to the
8 several creditors in proportion to the amount of their respective
9 demands. In all other cases the writ of execution first delivered
10 to the officer shall be first satisfied; and it shall be the duty
11 of the officer to endorse on every writ of execution the time when
12 ~~he or she~~ received the ~~same writ~~. This section shall not be ~~+~~ ~~but~~
13 ~~nothing herein contained shall be so~~ construed as to affect any
14 preferable lien which one or more of the judgments on which
15 execution issued may have on the lands of the judgment debtor.

16 Sec. 12. Section 25-1542, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 25-1542. No judgment on which execution has not been
19 taken out and levied before the expiration of five years ~~next~~ after
20 its ~~rendition~~ entry shall operate as a lien upon the estate of any
21 debtor to the preference of any other bona fide judgment creditor
22 or purchaser, but when judgment has been or may be rendered in the
23 Court of Appeals or Supreme Court and any special mandate awarded
24 to the district court to carry the same into execution, the lien of
25 the judgment creditor shall continue for five years after the first
26 day of the next term of the district court to which such mandate
27 may be directed. Nothing in this section shall be construed to
28 defeat the lien of any judgment creditor who fails to take out

1 execution and cause a levy to be made as provided in this section
2 when such failure is occasioned by appeal, proceedings in error, or
3 injunction or by a vacancy in the office of sheriff and coroner or
4 the inability of such officers until one year after such disability
5 is removed.

6 Sec. 13. Section 25-1804, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 25-1804. (1) A party seeking an award for fees and other
9 expenses pursuant to sections 25-1802 to 25-1807 shall, not later
10 than thirty days after the entry of the final judgment is made in
11 the action, submit to the court an application which provides
12 evidence of eligibility for an award pursuant to such sections and
13 which specifies the amount sought. If the amount sought includes
14 an attorney's fee or the fee for an expert witness, the application
15 shall include an itemized statement for each such fee indicating
16 the actual time expended in service to the applicant and the rate
17 at which the fees were computed.

18 (2) Notwithstanding any other provision of such sections,
19 fees and other expenses shall be awarded as provided in such
20 sections only to those prevailing parties who are:

21 (a) Natural persons; or

22 (b) A sole proprietorship, partnership, limited liability
23 company, corporation, association, or public or private
24 organization:

25 (i) That had an average daily employment of fifty persons
26 or less for the twelve months preceding the filing of such action;
27 and

28 (ii) Whose gross receipts for the twelve-month period

1 preceding the filing of the action was two million dollars or less
2 or whose average gross receipts for the three twelve-month periods
3 preceding the filing of such appeal pursuant to the Administrative
4 Procedure Act was two million dollars or less, whichever amount is
5 greater.

6 Sec. 14. Section 25-1912, Revised Statutes Supplement,
7 1999, is amended to read:

8 25-1912. (1) The proceedings to obtain a reversal,
9 vacation, or modification of judgments and decrees rendered or
10 final orders made by the district court, including judgments and
11 sentences upon convictions for felonies and misdemeanors, shall be
12 by filing in the office of the clerk of the district court in which
13 such judgment, decree, or final order was rendered, within thirty
14 days after the entry of such judgment, decree, or final order, a
15 notice of intention to prosecute such appeal signed by the
16 appellant or appellants or his, her, or their attorney of record
17 and, except as otherwise provided in sections 25-2301 to 25-2310,
18 29-2306, and 48-641, by depositing with the clerk of the district
19 court the docket fee required by section 33-103.

20 (2) A notice of appeal or docket fee filed or deposited
21 after the announcement of a decision or final order but before the
22 entry of the judgment, decree, or final order shall be treated as
23 filed or deposited after the entry of the judgment, decree, or
24 final order and on the date of entry.

25 (3) The running of the time for filing a notice of appeal
26 shall be terminated as to all parties (a) by a ~~motion for a new~~
27 ~~trial under section 25-1143 if such motion is filed by any party~~
28 ~~within ten days after the verdict, report, or decision was rendered~~

1 ~~or (b) by a motion to set aside the verdict or judgment under~~
2 ~~section 25-1315.02 if such motion is filed by any party within ten~~
3 ~~days after the receipt of a verdict~~ timely motion for a new trial
4 under section 5 of this act, (b) by a timely motion to alter or
5 amend a judgment under section 6 of this act, or (c) by a timely
6 motion to set aside the verdict or judgment under section
7 25-1315.02, and the full time for appeal fixed in subsection (1) of
8 this section commences to run from the entry of the order ruling
9 upon the motion filed pursuant to subdivision (a), (b), or (c) ~~or~~
10 ~~(b)~~ of this subsection. When any motion terminating the time for
11 filing a notice of appeal is timely filed by any party, a notice of
12 appeal filed before the court announces its decision upon the
13 terminating motion shall have no effect, whether filed before or
14 after the timely filing of the terminating motion. A new notice of
15 appeal shall be filed within the prescribed time after the entry of
16 the order ruling on the motion. No additional fees are required
17 for such filing. A notice of appeal filed after the court
18 announces its decision or order on the terminating motion but
19 before the entry of the order is treated as filed on the date of
20 and after the entry of the order.

21 (4) Except as otherwise provided in subsection (3) of
22 this section and sections 25-2301 to 25-2310, 29-2306, and 48-641,
23 an appeal shall be deemed perfected and the appellate court shall
24 have jurisdiction of the cause when such notice of appeal has been
25 filed and such docket fee deposited in the office of the clerk of
26 the district court, and after being perfected no appeal shall be
27 dismissed without notice, and no step other than the filing of such
28 notice of appeal and the depositing of such docket fee shall be

1 deemed jurisdictional.

2 (5) The clerk of the district court shall forward such
3 docket fee and a certified copy of such notice of appeal to the
4 Clerk of the Supreme Court, and the Clerk of the Supreme Court
5 shall docket such appeal.

6 (6) Within thirty days after the date of filing of notice
7 of appeal, the clerk of the district court shall prepare and file
8 with the Clerk of the Supreme Court a transcript certified as a
9 true copy of the proceedings contained therein. The Supreme Court
10 shall, by rule, specify the method of ordering the transcript and
11 the form and content of the transcript. Neither the form nor
12 substance of such transcript shall affect the jurisdiction of the
13 Court of Appeals or Supreme Court.

14 (7) Nothing in this section shall prevent any person from
15 giving supersedeas bond in the district court in the time and
16 manner provided in section 25-1916 nor affect the right of a
17 defendant in a criminal case to be admitted to bail pending the
18 review of such case in the Court of Appeals or Supreme Court.

19 Sec. 15. Section 25-1931, Revised Statutes Supplement,
20 1999, is amended to read:

21 25-1931. Proceedings under section 25-1901 for
22 reversing, vacating, or modifying judgments or final orders shall
23 be commenced within thirty days after the entry of the judgment,
24 ~~decree,~~ or final order complained of, except that when the person
25 entitled to such proceedings is an infant, mentally incompetent, or
26 imprisoned, he or she shall have one year, exclusive of the time of
27 his or her disability, within which to commence such proceedings.

28 Sec. 16. Section 25-2001, Revised Statutes Supplement,

1 1998, is amended to read:

2 25-2001. (1) The inherent power of a district court to
3 vacate or modify its judgments or orders during term may also be
4 exercised after the end of the term, upon the same grounds, upon a
5 motion filed within six months after the entry of the judgment or
6 order.

7 (2) The power of a district court under its equity
8 jurisdiction to set aside a judgment or an order as an equitable
9 remedy is not limited by this section.

10 (3) Clerical mistakes in judgments, orders, or other
11 parts of the record and errors therein arising from oversight or
12 omission may be corrected by the court by an order nunc pro tunc at
13 any time on the court's initiative or on the motion of any party
14 and after such notice, if any, as the court orders. During the
15 pendency of an appeal, such mistakes may be so corrected before the
16 case is submitted to the appellate court, and thereafter while the
17 appeal is pending may be so corrected with leave of the appellate
18 court.

19 (4) A district court ~~shall have power to~~ may vacate or
20 modify its own judgments or orders after the term at which such
21 judgments or orders were made ~~(1) by granting a new trial of the~~
22 ~~cause within the time and in the manner prescribed in sections~~
23 ~~25-1143 and 25-1145; (2) by a new trial granted in proceedings~~
24 ~~against defendants served by publication; (3) (a) for mistake,~~
25 ~~neglect, or omission of the clerk, or irregularity in obtaining a~~
26 ~~judgment or order; (4) (b) for fraud practiced by the successful~~
27 ~~party in obtaining the judgment or order; (5) (c) for newly~~
28 discovered material evidence which could not have been discovered

1 with reasonable diligence (i) before trial or (ii) in time to move
2 for a new trial; (d) for erroneous proceedings against an infant or
3 person of unsound mind, where if the condition of such defendant
4 does not appear in the record, nor the error in of the proceedings;
5 ~~(6)~~ (e) for the death of one of the parties before the judgment in
6 the action; (7) (f) for unavoidable casualty or misfortune,
7 preventing the party from prosecuting or defending; (8) for errors
8 in a judgment shown by an infant in twelve months after arriving at
9 full age, as prescribed in section 25-1317, and (9) and (g) for
10 taking judgments upon warrants of attorney for more than was due to
11 the plaintiff, when the defendant was not summoned or otherwise
12 legally notified of the time and place of taking such judgment.

13 Sec. 17. Section 25-2002, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 25-2002. The proceedings to vacate or modify the
16 judgment or order on the grounds mentioned in subsection (4) of
17 section 25-2001, subdivisions (4), (5), (6), (7), (8) and (9) shall
18 be by petition verified by affidavit, setting forth the judgment or
19 order, the grounds to vacate or modify it, and the defense to the
20 action, if the party applying was defendant. On such petition a
21 summons shall issue and be served as in the commencement of an
22 action. ~~Summons~~ + PROVIDED, such ~~summons~~ shall not issue in any
23 case in which there is upon the minutes of the court, or among the
24 files of the case, a waiver of error by the party or ~~his~~ the
25 ~~party's~~ attorney, unless the court or a judge thereof, ~~shall~~
26 ~~endorse~~ endorses upon the petition permission to issue such
27 summons.

28 Sec. 18. Section 25-2008, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 25-2008. Proceedings to vacate or modify a judgment or
3 order, for the causes mentioned in subsection (4) of section
4 25-2001, subdivisions (4), (5) and (7), must be commenced within no
5 later than two years after the entry of the judgment was rendered
6 or order made, or order unless the party entitled thereto ~~be~~ is an
7 infant or person of unsound mind, and then ~~within no later than~~ two
8 years after removal of such disability. ~~Proceedings for causes~~
9 ~~mentioned in subdivisions (3) and (6) of the same section shall be~~
10 ~~within three years, and in subdivision (9) within one year, after~~
11 ~~the defendant has notice of the judgment.~~

12 Sec. 19. Section 25-21,130, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 25-21,130. When judgment has been rendered in favor of
15 the claimant, ~~he~~ the claimant may at any time within one year
16 ~~thereafter, after the entry of the judgment~~ bring suit against the
17 defendant and recover the damages ~~he~~ the claimant has sustained by
18 reason of the act of the defendant.

19 Sec. 20. Section 25-21,167, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 25-21,167. The district court of Lancaster County shall
22 speedily determine the action, and an appeal may be taken to the
23 Court of Appeals within thirty days ~~thereafter~~ after the entry of
24 the judgment. Trial in the appellate court shall in all ways be
25 expedited, set for an early hearing, and advanced as other causes
26 which involve the public welfare and convenience are advanced.

27 Sec. 21. Section 25-21,217, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 25-21,217. If judgment for costs or damages ~~shall be~~ are
2 rendered against any such litigant and such litigant ~~shall fail,~~
3 ~~refuse or neglect to pay said~~ fails, refuses, or neglects to pay
4 the judgment within three months ~~from the rendition thereof after~~
5 the date of entry of the judgment, then the State of Nebraska shall
6 be liable for the payment of ~~said the~~ judgment and shall pay the
7 same.

8 Sec. 22. Section 25-21,220, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 25-21,220. Proceedings under sections 25-21,219 to
11 25-21,235 may be had:

12 (1) In ~~in~~ all cases against tenants holding over their
13 terms, and a tenant shall be deemed to be holding over his or her
14 term whenever ~~he~~ the tenant has failed, neglected, or refused to
15 pay the rent or any part thereof when the ~~same~~ rent became due; ~~in~~

16 (2) In all cases of sales of real estate or executions,
17 orders, or other judicial process when the judgment debtor was in
18 possession at the time of the ~~rendition~~ entry of the judgment of ~~or~~
19 decree, by ~~virtue of~~ which such sale was made; ~~in~~

20 (3) In all cases of sale by executors or administrators
21 or guardians and on partition ~~where~~ if any of the parties to the
22 partition were in possession at the commencement of the suit after
23 such sales so made on execution or otherwise ~~shall~~ have been
24 examined by the proper court and the ~~same~~ by such court sales
25 adjudged legal; and ~~in~~

26 (4) In all cases ~~where~~ when the defendant is a settler or
27 occupier of lands or tenements, without color of title, and to
28 which the complainant has the right of possession.

1 This section shall not be construed as limiting the
2 provisions of section 25-21,219.

3 Sec. 23. Section 25-21,230, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-21,230. ~~Where~~ If a judgment of restitution ~~shall be~~
6 is entered, the court shall, at the request of the plaintiff, or
7 ~~his~~ the plaintiff's attorney, issue a writ of execution thereon
8 which shall be in the following form, as nearly as practicable:

9 The State of Nebraska, County, ss.

10 To any Constable or Sheriff of County:

11 Whereas, in a certain action for the forcible entry and
12 detention, (or the forcible detention, as the case may be) of the
13 following described premises, to wit:, lately
14 tried before this court, wherein was plaintiff,
15 and was defendant, judgment was ~~rendered~~ entered on
16 the day of A.D., you therefor are
17 hereby commanded to cause the defendant to be forthwith removed
18 from ~~said~~ the premises, and the ~~said~~ plaintiff to have restitution
19 of the same; also that you levy of the goods and chattels of the
20 ~~said~~ defendant, and make the costs aforesaid, and all accruing
21 costs; and of this writ make legal service and due return. Witness
22 my hand this day of, A.D., Clerk of the
23 County Court.

24 Sec. 24. Section 25-2728, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 25-2728. (1) Any party in a civil case and any defendant
27 in a criminal case may appeal from the final judgment or final
28 order of the county court to the district court of the county where

1 the county court is located. In a criminal case, a prosecuting
2 attorney may obtain review by exception proceedings pursuant to
3 sections 29-2317 to 29-2319.

4 (2) Sections 25-2728 to 25-2738 shall not apply to:

5 (a) Appeals in eminent domain proceedings as provided in
6 sections 76-715 to 76-723;

7 (b) Appeals in proceedings in the county court sitting as
8 a juvenile court as provided in sections 43-287.01 to 43-287.06,
9 43-2,106, and 43-2,106.01;

10 (c) Appeals in matters arising under the Nebraska Probate
11 Code as provided in section 30-1601;

12 (d) Appeals in adoption proceedings as provided in
13 section 43-112; ~~and~~

14 (e) Appeals in inheritance tax proceedings as provided in
15 section 77-2023; and

16 (f) Appeals in domestic relations matters as provided in
17 section 25-2739.

18 Sec. 25. Section 25-2729, Revised Statutes Supplement,
19 1999, is amended to read:

20 25-2729. (1) In order to perfect an appeal from the
21 county court, the appealing party shall within thirty days after
22 the entry of the judgment or final order complained of:

23 (a) File with the clerk of the county court a notice of
24 appeal; and

25 (b) Deposit with the clerk of the county court a docket
26 fee in the amount of the filing fee in district court.

27 (2) Satisfaction of the requirements of subsection (1) of
28 this section shall perfect the appeal and give the district court

1 jurisdiction of the matter appealed.

2 (3) The entry of a judgment or final order occurs when
3 the clerk of the court places the file stamp and date upon the
4 judgment or final order. For purposes of determining the time for
5 appeal, the date stamped on the judgment or final order shall be
6 the date of entry.

7 (4) In appeals from the Small Claims Court only, the
8 appealing party shall also, within the time fixed by subsection (1)
9 of this section, deposit with the clerk of the county court a cash
10 bond or undertaking, with at least one good and sufficient surety
11 approved by the court, in the amount of fifty dollars, conditioned
12 that the appellant will satisfy any judgment and costs that may be
13 adjudged against him or her.

14 (5) A notice of appeal or docket fee filed or deposited
15 after the announcement of a decision or final order but before the
16 entry of the judgment or final order shall be treated as filed or
17 deposited after the entry of the judgment or final order and on the
18 day of entry.

19 (6) The running of the time for filing a notice of appeal
20 shall be terminated as to all parties (a) by a ~~motion for a new~~
21 ~~trial under section 25-1143~~ if such motion is filed by any party
22 ~~within ten days after the verdict, report, or decision was rendered~~
23 ~~or (b) by a motion to set aside the verdict or judgment under~~
24 ~~section 25-1315.02 if such motion is filed by any party within ten~~
25 ~~days after the receipt of a verdict~~ timely motion for a new trial
26 under section 5 of this act, (b) by a timely motion to alter or
27 amend a judgment under section 6 of this act, or (c) by a timely
28 motion to set aside the verdict or judgment under section

1 25-1315.02, and the full time for appeal fixed in subsection (1) of
2 this section commences to run from the entry of the order ruling
3 upon the motion filed pursuant to subdivision (a), (b), or (c) ~~or~~
4 ~~(b)~~ of this subsection. When any motion terminating the time for
5 filing a notice of appeal is timely filed by any party, a notice of
6 appeal filed before the court announces its decision upon the
7 terminating motion shall have no effect, whether filed before or
8 after the timely filing of the terminating motion. A new notice of
9 appeal shall be filed within the prescribed time from the entry of
10 the order ruling on the motion. No additional fees are required
11 for such filing. A notice of appeal filed after the court
12 announces its decision or order on the terminating motion but
13 before the entry of the order is treated as filed on the date of
14 and after the entry of the order.

15 (7) The party appealing shall serve a copy of the notice
16 of appeal upon all parties who have appeared in the action or upon
17 their attorney of record. Proof of service shall be filed with the
18 notice of appeal.

19 (8) If an appellant fails to comply with any provision of
20 subsection (4) or (7) of this section, the district court on motion
21 and notice may take such action, including dismissal of the appeal,
22 as is just.

23 Sec. 26. Section 25-2733, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 25-2733. (1) In all cases other than appeals from the
26 Small Claims Court, the district court shall review the case for
27 error appearing on the record made in the county court. The
28 district court shall render a judgment which may affirm, affirm but

1 modify, or reverse the judgment or final order of the county court.
2 If the district court reverses, it may enter judgment in accordance
3 with its findings or remand the case to the county court for
4 further proceedings consistent with the judgment of the district
5 court. Within two judicial days after the decision of the district
6 court becomes final, the clerk of the district court shall issue a
7 mandate in appeals from the county court and transmit the mandate
8 in appeals to the clerk of the county court on the form prescribed
9 by the Supreme Court together with a copy of such decision.

10 (2) The bill of exceptions, if filed with the clerk at or
11 before the hearing, shall be considered admitted in evidence on the
12 hearing of the appeal unless the court on objection by a party
13 excludes all or part of it.

14 (3) The judgment of the district court shall vacate the
15 judgment in the county court. The taxation of costs in the
16 district court shall include the costs in the county court. If a
17 judgment of the county court is affirmed or affirmed but modified,
18 interest on the amount of the judgment in the district court that
19 does not exceed the amount of the judgment in the county court
20 shall run from the date of entry of the judgment appealed from the
21 county court.

22 Sec. 27. Section 27-802, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 27-802. Hearsay is not admissible except as provided by
25 these rules, ~~or~~ by other rules adopted by the statutes of the State
26 of Nebraska, or by the discovery rules of the Supreme Court.

27 Sec. 28. Section 29-2525, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 29-2525. In cases when the punishment is capital, no
2 notice of appeal shall be required and within the time prescribed
3 by section ~~25-1931~~ 25-1912 for the commencement of proceedings for
4 the reversing, vacating, or modifying of judgments, the clerk of
5 the district court in which the conviction was had shall notify the
6 court reporter who shall prepare a bill of exceptions as in other
7 cases and the clerk shall prepare and file with the Clerk of the
8 Supreme Court a transcript of the record of the proceedings, for
9 which no charge shall be made. The Clerk of the Supreme Court
10 shall, upon receipt of the transcript, docket the appeal. No
11 payment of a docket fee shall be required.

12 The Supreme Court shall expedite the rendering of its
13 opinion on the appeal, giving the matter priority over civil and
14 noncapital criminal matters.

15 Sec. 29. Section 42-372, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 42-372. (1) A decree dissolving a marriage becomes final
18 and operative, except for the purpose of review by appeal, at the
19 time specified in section 42-372.01.

20 (2) For the purpose of review by appeal, the decree shall
21 be treated as a final order as soon as it is ~~rendered~~ entered. If
22 an appeal is instituted that does not challenge the finding that
23 the marriage is irretrievably broken, then the decree shall become
24 final and operative, as to that portion of the decree that
25 dissolves the marriage, at the time specified in section 42-372.01
26 as if no such appeal had been instituted. If an appeal is
27 instituted within thirty days after the date the decree is ~~rendered~~
28 entered that challenges the finding that the marriage is

1 irretrievably broken, such decree does not become final until such
2 proceedings are finally determined or the date of death of one of
3 the parties to the dissolution, whichever occurs first.

4 Sec. 30. Section 42-372.01, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 42-372.01. (1) Except for purposes of appeal as
7 prescribed in section 42-372, for purposes of remarriage as
8 prescribed in subsection (2) of this section, and for purposes of
9 continuation of health insurance coverage as prescribed in
10 subsection (3) of this section, a decree dissolving a marriage
11 becomes final and operative thirty days after the decree is
12 ~~rendered~~ entered or on the date of death of one of the parties to
13 the dissolution, whichever occurs first. If the decree becomes
14 final and operative upon the date of death of one of the parties to
15 the dissolution, the decree shall be treated as if it became final
16 and operative the date it was ~~rendered~~ entered.

17 (2) For purposes of remarriage other than remarriage
18 between the parties, a decree dissolving a marriage becomes final
19 and operative six months after the decree is ~~rendered~~ entered or on
20 the date of death of one of the parties to the dissolution,
21 whichever occurs first. If the decree becomes final and operative
22 upon the date of death of one of the parties to the dissolution,
23 the decree shall be treated as if became final and operative the
24 date it was ~~rendered~~ entered.

25 (3) For purposes of continuation of health insurance
26 coverage, a decree dissolving a marriage becomes final and
27 operative six months after the decree is ~~rendered~~ entered.

28 (4) A decree dissolving a marriage rendered prior to

1 September 9, 1995, which is not final and operative becomes
2 operative pursuant to the provisions of section 42-372 as such
3 section existed immediately preceding September 9, 1995.

4 Sec. 31. Section 45-103, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 45-103. Interest on decrees and judgments for the
7 payment of money shall be fixed at a rate equal to one percentage
8 point above the bond equivalent yield, as published by the
9 Secretary of the Treasury of the United States, of the average
10 accepted auction price for the last auction of fifty-two-week
11 United States Treasury bills in effect on the date of entry of the
12 judgment. The State Court Administrator shall distribute notice of
13 such rate and any changes to it to all Nebraska judges to be in
14 effect two weeks after the date the auction price is published by
15 the Secretary of the Treasury of the United States. This interest
16 rate shall not apply to:

17 (1) An action in which the interest rate is specifically
18 provided by law; or

19 (2) An action founded upon an oral or written contract in
20 which the parties have agreed to a rate of interest other than that
21 specified in this section.

22 Sec. 32. Section 76-718, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 76-718. After ~~rendition~~ entry of final judgment in the
25 district court on the appeal, a certified copy thereof shall be
26 prepared and transmitted by the clerk of the district court to the
27 county judge.

28 Sec. 33. Original sections 11-124, 25-525, 25-1142,

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1 25-1273.01, 25-1315.02, 25-1515, 25-1517, 25-1542, 25-1804,
2 25-2002, 25-2008, 25-21,130, 25-21,167, 25-21,217, 25-21,220,
3 25-21,230, 25-2728, 25-2733, 27-802, 29-2525, 42-372, 42-372.01,
4 45-103, and 76-718, Reissue Revised Statutes of Nebraska, section
5 25-2001, Revised Statutes Supplement, 1998, and sections 25-705,
6 25-1912, 25-1931, and 25-2729, Revised Statutes Supplement, 1999,
7 are repealed.

8 Sec. 34. The following sections are outright repealed:
9 Sections 25-1143, 25-1145, 25-1302, and 25-2003, Reissue Revised
10 Statutes of Nebraska.